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Achieving Success

A person wearing a dark blue long-sleeved jacket is pushing a blue stroller along a paved path. The stroller has a blue canopy and a baby is visible inside, wearing an orange shirt and blue pants. The path is surrounded by grass and fallen leaves.

Child Abductions Nightmares in Progress

By DAVID M. ALLENDER

“Where’s my baby?” A young mother’s frightened cry shatters the tranquility of a lazy summer afternoon at a local park. Confusion reigns as many of the crowded park’s visitors begin to look for the 2-year-old toddler who has disappeared. Someone finally thinks to call the police. After calming everyone down and establishing intelligible communication, the responding officer identifies an area that none of the well-meaning volunteers had thought to search. A quick visual examination of the location, coupled with years of experience, enabled the officer to identify a particular spot that needed a closer look. Walking to the site, the officer finds the child peacefully sleeping on a lush patch of comfortable green grass. All ends happily with the sobbing young mother reunited with her confused, half-awake baby.

Although this scenario does not describe a particular incident, all law enforcement officers who have worked uniform patrol undoubtedly can relate to it. When a child or loved one goes missing, fear, stress, and confusion often combine to create panic and hysteria. Investigating officers must work through all of these emotions to uncover facts that will allow them to draw proper conclusions that can lead to the recovery of the missing person.

Investigative Responsibility

In today's increasingly technological world, many people's views concerning law enforcement have become distorted by what they see on television. Those unfamiliar with investigations of missing persons often

have watched television shows wherein FBI agents respond and take over all manner of missing person cases, which they then successfully resolve within the 1-hour time frame. Many of the general public believe, based on such shows, that the FBI automatically responds to any case involving a missing person. In reality, the local "cop on the beat" usually arrives as the first law enforcement officer on the scene and begins the investigation. At one time, no federal agency had responsibility or jurisdiction to investigate these cases. Kidnapped, lost, or missing people were considered a problem best dealt with by local authorities. This changed dramatically, however, with the kidnapping of Charles Lindbergh's young son in 1932.

Any student of history or aviation knows that, as the first person to fly solo across the Atlantic Ocean, Charles Lindbergh became one of America's most notable heroes. This was an incredibly brave undertaking. In 1927, planes were not reliable; navigation over water was dangerous because there were no landmarks; and, choosing additional fuel over the weight of a radio, Lindbergh had no way to communicate should problems arise. After his successful flight, the young hero faced all of the positive and negative aspects of becoming immensely famous. Without a doubt, the most heartbreaking result of this notoriety occurred in 1932 when kidnappers abducted the Lindbergh's baby son from a bedroom in their Hopewell, New Jersey, home and left a ransom note. Several days later, the child was found dead. Local authorities in Hopewell and the New Jersey State Police shared jurisdiction for the investigation, which made national headlines. Although both kidnappers were caught, convicted, and executed, the public was appalled that the vast resources of the federal government could not be immediately focused on a case of this magnitude. Congress responded later that year with the passage of the Federal Kidnapping Act,¹ which allowed the use of federal agencies in kidnapping cases.



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”**

Captain Allender, former head of the Juvenile/Missing Persons Branch, currently serves as second in command of the Southeast District of the Indianapolis, Indiana, Metropolitan Police Department.

Little modification occurred in the investigation of missing children from 1932 until 1968. As society changed and divorce became more prevalent, child custody issues took on increasing importance. During a divorce proceeding, one parent normally was awarded custody of the child or children. To change this, all the other parent had to do was go to another state, find a judge to issue a conflicting order that granted that parent custody, and simply not return to the state where the first order was issued. Although the second ruling could be challenged, it was a long, expensive process that often proved unsuccessful. In 1968, the U.S. Congress addressed this with the passage of the Uniform Child Custody Jurisdiction Act (UCCJA),² which made the practice of moving to another state for the purpose of changing custody illegal. Unfortunately, conflicting court orders still were issued, causing confusion for law enforcement officers when parents reported their children as missing. Which court order to enforce had to be decided on a case-by-case basis.

The problem of missing children continued to grow. During the 1980s, the federal government enacted several measures that provided law enforcement with tools necessary to investigate these cases. In 1980, Congress passed the

Parental Kidnapping Prevention Act³ to strengthen the UCCJA and allowed states to use the Federal Parent Locator Service to obtain address information on noncustodial parents who abducted their children. This act also authorized the use of the Fugitive Felon Act⁴ against these same individuals. In 1982, Congress changed National Crime Information Center (NCIC) rules to allow the entry

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Dallas, Texas, was the first community to create and use a system involving the media in an attempt to locate missing children.

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of missing children into the system. Prior to this, police had to obtain a warrant for the noncustodial parent's arrest. At the time, most jurisdictions considered these cases strictly as civil matters and would not issue warrants, which meant that the vast majority of children taken by a noncustodial parent were not eligible for entry into NCIC. The Missing Children Act of 1982⁵ allowed the entry of these missing children even though

the noncustodial parent would not be charged with a crime. Two years later, Congress revisited this issue yet again and passed the Missing Children's Assistance Act (MCAA),⁶ creating a national clearinghouse for missing children and authorizing research to determine the extent of the problem within this country. Globalization also has played a role in this field. Congress recognized this and, in 1988, ratified the Hague Convention treaty on missing children with the passage of the International Child Abduction Remedies Act,⁷ whereby the U.S. Department of State would become involved in noncustodial parental abductions where the abducting parent takes the victim outside the boundaries of the United States.

As the research ordered by the MCAA of 1984 started to come in, society began to recognize the extent of the problem with missing and exploited children. In 1990, Congress again stepped up and passed the National Child Search Assistance Act (NCSAA),⁸ mandating law enforcement agencies to enter each reported missing child (under 18 years of age) into NCIC, including all reported runaways. NCSAA also increased the involvement of the National Center for Missing and Exploited Children (NCMEC) with law enforcement throughout the country. In 1993, those

in law enforcement involved in fighting international kidnapping received additional support from Congress with the passage of the International Parental Kidnapping Crime Act,⁹ making it a felony for a person to remove a child from the United States in an attempt to interfere with lawful court orders granted in custody matters.

Finally, in 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act,¹⁰ designed to determine the number of sex offenders and provide law enforcement with a readily accessible database with possible suspect information should a child go missing. Later modification under Megan's Law permits law enforcement to provide information on registered sex offenders to the general public, resulting in numerous publicly accessible Web sites. Congress made this act stronger in 2006 with federal penalties for failure to register. In 2007, a national database will begin operating.

An overview of this legislation shows that the focus and extent of this problem has changed dramatically, especially since 1980. However, the law enforcement community still does not know its true extent because NCMEC receives fewer than 200 stranger-abduction reports annually.¹¹ What the profession has learned from the

growing statistics compiled by NCMEC, coupled with supporting legislation passed over the years, is that an ongoing problem exists with noncustodial parental abductions. These crimes—most states consider them felonies—normally are committed against children because the abductors refuse to accept the lawful issuance of a court order. They represent a reprehensible form of domestic violence and should be seen as such.

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***The custodial parent
may not even know
that an abduction
has occurred
before the suspect
has fled the state.***

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AMBER Alert

In 2003, Congress took a monumental step in the fight against child abductions with the passage of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act, or, more commonly, the PROTECT Act.¹² While arguably the most comprehensive legislation designed to ensure the safety of children ever passed, one

segment, however, has garnered the most attention. The PROTECT Act created the AMBER (America's Missing: Broadcast Emergency Response) Alert system, a partnership involving law enforcement, other government agencies, and the news media to produce public service announcements about certain abducted children whose cases meet identified criteria.¹³ Those unfamiliar with the system often ask why some children appear more important than others. All children are equally important. In a perfect world, each case would be handled the same, but not all cases lend themselves to the same investigative tools. Sheer volume dictates that the news media cannot become involved in the investigation of all missing children.¹⁴ Moreover, to maintain the intense impact of the alerts, authorities must use them judiciously. Recognizing these realities, those who designed AMBER Alert targeted the stranger abductor. Further evaluation, however, revealed that children often were in more danger from noncustodial parental abductors or other family members than from unknown “bogeymen.” Therefore, the system was modified to include the issuance of alerts involving family members.

Dallas, Texas, was the first community to create and use a system involving the media in an attempt to locate

missing children. In 1996, a man grabbed 9-year-old Amber Hagerman from her bicycle, threw the screaming child into the pickup truck he was driving, and left the area. Amber was found murdered 4 days later, and her homicide remains unsolved. A concerned citizen contacted a local radio station and suggested that it broadcast missing children alerts similar to those concerning inclement weather. Within 5 years, this commonsense approach to a difficult problem achieved national acceptance.

With the goal of effectively recovering endangered children, how do authorities decide if a missing child fits the criteria specified for broadcast? The U.S. Department of Justice, the organizing agency nationwide, recommends that law enforcement agencies—

- reasonably believe that an abduction has occurred;
- feel that the child is in imminent danger of serious bodily injury or death;
- have enough descriptive information about the victim and the abduction to issue an AMBER Alert to assist in the recovery of the child;
- know that the abducted child is 17 years of age or younger; and
- have entered the child's name and other critical data

elements, including flagging it as a child abduction, into NCIC.

While not specified within this list, other issues are implied. For example, the request for the alert must come from a law enforcement agency. A police report must be on file, a requirement for entry into NCIC. A recent picture of the child and an adequate description of the clothing worn when abducted are helpful but not



required. And, the abduction must have occurred recently, preferably within 5 hours but possibly as long as 24. Of importance, agencies should remember that no required waiting period exists for entering a missing person into NCIC. Once they receive the report, they can enter the information.

Finally, AMBER Alert is only one item in an effective investigator's toolbox. After

all, child abductors, including noncustodial parents, are dangerous criminals, and officers can employ the same tools to apprehend them as they do any other type of potentially violent offender.

Investigative Suggestions

By its very nature, abduction must take priority over many types of cases. Research has indicated that strangers who commit the offense with the intention of fulfilling a sexual desire often murder their victims within 3 hours. In contrast, non-custodial parents may take the child to use as a weapon against their former significant other. So, in either situation, time may be very short. The person responsible for the investigation must be called immediately to the scene. No agency would assign a homicide investigator a case the next morning and then reconstruct the incident from police reports. Abductions can be even more complex than some murders. With all criminally violent suspects, law enforcement officers employ proven methods to locate them. All of these and more also come into play during the investigation of an abduction.

Just as with any other investigation, however, the best efforts by law enforcement may not lead to a quick resolution of a case. If the incident is a

stranger abduction, law enforcement administrators must be prepared for the anger of the family to be redirected toward their agency. These family members are hurt and, especially if the victim is not recovered, need closure. When this is lacking, they react like any other human being and find somewhere to refocus their anger. Departmental procedures prepared in advance can help investigators cope with such difficulties and reassure the family that authorities are doing all they can.¹⁵

Noncustodial parental abductions can prove equally dangerous to a child. Often, the suspect takes the child and starts another life outside the investigating agency's jurisdiction. Again, investigators need to recognize and use the methods they would in any other criminal investigation. In most states, a noncustodial parental abduction is a felony. Even before charges are filed, however, the law enforcement agency can enter the child, the suspect, and the suspect's vehicle into NCIC. If the department cross-references all of the information, it will alert officers in other jurisdictions who may stop the suspect on a traffic violation and possibly recover the child. The custodial parent then can make arrangements to retrieve the child.¹⁶ Once the felony warrant is on file and if investigators believe the suspect has fled

their jurisdiction, the FBI can help obtain a warrant for unlawful flight to avoid prosecution. This enables a wide variety of federal resources to come into play, including the Federal Parent Locator Service, which coordinates with such agencies as the Internal Revenue Service, the U.S. Social Security Administration, and the U.S. Department of Agriculture to monitor the issuance of checks and notifies law enforcement if the suspect registers for or receives any type of public assistance.

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Early in the investigation, agencies may want to request an off-line search from NCIC. Usually, abductions are planned, and, within minutes of the act, the suspect may have left the jurisdiction with the child. Often, the abductor may drive too fast, leading to a stop on a traffic violation. The custodial

parent may not even know that an abduction has occurred before the suspect has fled the state. An off-line search can show the location of the stop, thereby giving investigators an indication of the abductor's possible destination.

In 2005, this tactic worked for an investigator in Indianapolis, Indiana. A mother was allowed to make an unsupervised visitation with her child, a ward of the state because of the woman's history of drug abuse and neglect. When the mother did not return as scheduled, a child protective services worker made a police report. Officers had no idea which way the woman would go. An off-line search revealed that an officer in Missouri had stopped her for a traffic violation only a few hours after she had picked up the child for the visit, prior to the Indianapolis police receiving the report of the missing child. Through a variety of tools, including federal assistance agencies, the Indianapolis investigator tracked the woman to Long Beach, California, where detectives located the suspect and her children living in a van under a bridge. extradited to Indianapolis, she was prosecuted and convicted on the felony charge. The judge in the case felt that she would continue to be a danger to her children and sentenced her to a prison term.

Conclusion

Child abductions pose one of the most critical offenses that law enforcement officers handle and, without a doubt, the worst fear that any parent endures. Cooperative efforts, such as AMBER Alert, and legislative measures have provided authorities with additional means of combating these crimes.

However, the ongoing problem of noncustodial parental abductions requires even greater focus. Children caught in these situations are victims used as a weapon by one parent against the other. Such children usually receive sporadic education; they

often live in poverty or substandard housing; and the need to avoid detection leads to frequent relocations. Such factors can irreparably damage these children. Progressive law enforcement administrators need to ensure that their agencies' policies related to this issue will protect the rights of the victims and lead to the apprehension of these criminals. ♦

Endnotes

¹ 18 U.S.C. § 1201(a)(1)

² 19 U.S.C. chapter 16

³ 28 U.S.C. § 1738(a)

⁴ 18 U.S.C. § 1073

⁵ 28 U.S.C. § 534

⁶ 42 U.S.C. § 5771

⁷ 42 U.S.C. §§ 11601-11610

⁸ 42 U.S.C. § 5779

⁹ 18 U.S.C. § 1204

¹⁰ 42 U.S.C. § 14071

¹¹ The FBI's Uniform Crime Reporting Program has no category for abductions per se. It has a listing in Part II offenses for those against family and children, but because Part I offenses take precedence, a child abducted and raped will be counted as a forcible rape in most agencies.

¹² 18 U.S.C. § 2252

¹³ For additional information, access <http://www.amberalert.gov>.

¹⁴ <http://www.missingkids.com>

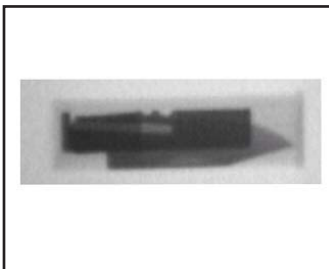
¹⁵ NCMEC can be contacted as a source for both model policies and excellent training, which they provide at no cost to a wide variety of agencies working with children.

¹⁶ If the parent cannot pay for the trip to recover the child, NCMEC offers referrals to one of its partnering organizations, which will provide free transportation.

Unusual Weapon

Shotshell Knife

These photos depict what appears to be a shell for a shotgun. Instead, a metal blade is inside the plastic shell. The head stamp reads "12-GA Remington Peters." This object poses a serious danger to law enforcement officers.



DNA: Forensic and Legal Applications
by Lawrence Kobilinsky, Thomas F. Liotti, and
Jamel Oeser-Sweat, Wiley-Interscience, John
Wiley & Sons, Inc., Hoboken, New Jersey,
2005.

No subject is as conceptually complex, operationally technical, and professionally necessary to understand today than deoxyribonucleic acid (DNA). It has radically changed the way the criminal justice system works; its collection and analysis leads to convictions of previously unknown criminals and to the exoneration of the innocent accused. Almost every criminal law practitioner can testify to the impact of the DNA revolution, especially to the expectations of jurors and other laypersons on what the effects of forensic science should be in solving criminal cases, partly because of glamorization by the plethora of forensic investigation programs on television. Therefore, prosecutors should understand the science of DNA analysis as thoroughly as possible to counter objections from the defense and to begin to meet or forestall the expectations of jurors.

An appropriate beginning text for this purpose is *DNA: Forensic and Legal Applications*. The authors approach the subject starting from the most basic understanding of the scientific background of DNA analysis and expanding to the actual methodology used in the various testing processes. They also discuss general principles of forensic science and data collection/crime scene investigation, including the strengths and weaknesses of each of the currently used DNA analyses. Particularly helpful is the insight gained from viewing each process on a theoretical and conceptual basis (i.e., understanding what is being tested and compared in each testing method), rather than just reading a lab report where a technician

used a certain method that provided a particular result. Indeed, knowing the strengths and limitations of each technique can explain why others were not used, as well as to better point out the valuable information gained by using one process, rather than another.

Prosecutors, in particular, may want to pay close attention to the authors' emphasis on the importance of statistical matters and population genetics in DNA analysis. DNA evidence, for example, can show that the sample collected from a rape victim cannot be excluded as having come from a defendant or suspect because to get a random match as tested would occur only once in billions or trillions of tests. Thorough comprehension of the ideas that make DNA evidence so remarkably probative in court will prepare counsel to present the material to the jury in an understandable and persuasive way. In addition, the sections dealing with mixed samples (containing multiple sources of DNA) and the methods used to manage such results are helpful, especially in rape cases where mixed DNA samples may occur.

The authors expend some effort discussing the legal history of admitting DNA and other scientific or technical evidence, including the Frye and Daubert decisions and their progeny. This material is not only of historical value but of practical importance because the science of DNA testing continues to change and new methods of analysis eventually will have to pass one of these standards to be admissible in court.

Whole sections of the book contain discussions and exemplars of how to conduct voir dire, question experts, make objections, and close effectively in DNA cases. That much of this material is written from a defense perspective matters not at all for prosecutors because anticipating where their opposition might

Chapters dealing with scientific materials each contain a healthy reference bibliography for further study or collaboration with a DNA expert. The work closes with appendices detailing further bibliographical sources, state and federal court cases addressing the admissibility of various DNA testing methods, contact information for innocence projects, defense DNA discovery request suggestions, and a glossary.

progressively more common and relied-upon DNA evidence. This fairly short text (364 pages, including bibliographic materials, appendices, and an index) will help them gain a more foundational and in-depth understanding of the mechanics of DNA testing and the theory behind it that gives meaning to the science and makes it so relevant in court, as well as provide them with the impetus for sparking ideas about how better to present a DNA case before judge and jury.

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Understanding Stockholm Syndrome

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VINCENT B. VAN HASSELT, Ph.D.



Men, when they receive good from whence they expect evil, feel the more indebted to their benefactor.

—Niccolo Machiavelli

The world watched as Elizabeth Smart's family, both panicked and heartbroken, desperately cried out to news cameras and begged for their teenager's safe return. Viewers saw haunting images from a home movie that featured a beautiful young girl playing the harp like an angel. The terror of this 14-year-old snatched from her bed captivated the hearts and minds of millions.

So, when authorities rescued and safely returned her home, people questioned how, in 9 months, she could not escape or ask someone—anyone—for help. But, her abductors did not hold her captive, as initially believed. In fact, she walked in public, attended parties, and even refused to reveal her true identity when first approached by police. Perhaps, even more puzzling than her initial reluctance to escape was her



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apparent concern upon rescue about the fate of her captors. “What’s going to happen to them? Are they in trouble?” she asked. When informed by officers that they likely would face punishment, she started to cry and sobbed the whole way to the station.¹

This high-profile kidnapping generated a lot of scrutiny. In attempting to explain her reluctance to be rescued and her compassion toward the perpetrators, some mistakenly have suggested that Elizabeth Smart serves as yet another example of Stockholm syndrome and that her captors must have “brain-washed” her.² However, compassion alone does not define the condition, and this situation did not feature all elements necessary for development to truly

occur. Instead, the case demonstrates the difficulty of gaining a true understanding of the phenomenon. Although scenarios resulting in the condition are rare, crisis negotiators must have a clear understanding of the psychological processes related to Stockholm syndrome to recognize and successfully address hostage and barricade-with-victim situations where it manifests.

STOCKHOLM SYNDROME DEFINED

Background

The term *Stockholm syndrome* was coined after the 1973 robbery of Kreditbanken in Stockholm, Sweden, in which two robbers held four bank employees hostage from August

23 to 28. During this time, the victims shared a vault and became very familiar with their captors—in fact, they wound up emotionally attached and even defended them after the ordeal. Today, people view Stockholm syndrome as a psychological response of a hostage or an individual in a similar situation in which the more dominant person has the power to put the victim’s life in danger. Perpetrators occasionally use this advantage to get victims to comply with their demands.³

Disagreement exists over the identification of which factors characterize incidents that contribute to the development of Stockholm syndrome. Research has suggested that hostages may exhibit the condition in situations that feature captors

who do not abuse the victim, a long duration before resolution, continued contact between the perpetrator and hostage, and a high level of emotion. In fact, experts have concluded that the intensity, not the length of the incident, combined with a lack of physical abuse more likely will create favorable conditions for the development of Stockholm syndrome. Apparently, a strong emotional bond develops between persons who share these life-threatening experiences.

The 1985 hijacking of TWA Flight 847 showcases these factors and demonstrates the variability among the hostages' responses. Shortly after takeoff from Athens, Greece, two terrorists armed with guns stormed the cockpit and demanded the diversion of the flight to Beirut, Lebanon. After capturing the plane, the perpetrators released the women and children. Two sailors and a group of wealthy American businessmen remained on the aircraft, and the captors held them for 10 days. During the incident, the terrorists threatened the hostages with guns to their heads and in their mouths. They also beat one of the victims to death and dumped his body out of the tail section of the plane.

After the eventual rescue, reporters interviewed the captives as they disembarked. When asked to describe the

captors, one hostage stated, "They weren't bad people; they let me eat, they let me sleep, they gave me my life."⁴ However, while one victim did display feelings of compassion for the perpetrators, most of the hostages showed no evidence of Stockholm syndrome. On the contrary, because of the violent manner in which the terrorists treated nearly all of the victims, most of the captives expressed fear that their captors would kill them and understood that their greatest chance for survival lay in the authorities' hands.

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***Crisis negotiators...
encourage its
development because
it improves the
chances of hostage
survival...***

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Characteristics

Stockholm syndrome is a paradoxical psychological phenomenon wherein a positive bond between hostage and captor occurs that appears irrational in light of the frightening ordeal endured by the victims. In essence, eventually, the hostage views the perpetrator as giving life by simply not

taking it. Individuals involved in situations resulting in Stockholm syndrome display three characteristics, although these do not always exist together. Law enforcement officers must encourage and tolerate the first two components to, hopefully, induce the third, which preserves life.

- 1) Hostages have positive feelings for their captors.
- 2) Victims show fear, distrust, and anger toward the authorities.
- 3) Perpetrators display positive feelings toward captives as they begin to see them as human beings.

FREQUENCY OF THE PHENOMENON

According to the FBI's Hostage Barricade Database System, which contains data pertaining to over 4,700 reported federal, state, and local hostage/barricade incidents, 73 percent of captives show no evidence of Stockholm syndrome. And, while victims can display negative feelings toward law enforcement (usually out of frustration with the pace of negotiations), most do not develop the condition.⁵

One of the authors, a retired FBI expert, stated that in a career of over 30 years in law enforcement, he rarely witnessed behavior indicative of the development of

Stockholm syndrome.⁶ “I’ve seen the reluctance on the part of some hostages who refuse to come out without the hostage taker less than a handful of times.” His explanation rests on the approximation that nearly 96 percent of hostage and barricade situations in the United States are domestic in nature; involve suicide, attempted suicide, and domestic violence; and include subjects with an existing relationship. He reports that for Stockholm syndrome to occur, the incident must take place between strangers, and the hostage must come to fear and resent law enforcement as much as or more than the perpetrators.

THE PSYCHOLOGICAL PROCESS

Fully comprehending Stockholm syndrome requires an understanding of the process that leads to its development. Most important, this condition does not result from a conscious decision or a rational choice to befriend a captor. From a psychological perspective, the ego, described by Sigmund Freud as the “personality core,” is responsible for providing people with defense mechanisms—ways for them to guard or distance themselves from and remain consciously unaware of unpleasant thoughts, feelings, and desires—and also helps individuals avoid hurt and disorganization.⁷



In hostage situations, the healthy ego seeks a means to achieve survival. In cases where Stockholm syndrome has occurred, the captive is in a situation where the captor has stripped nearly all forms of independence and gained control of the victim’s life, as well as basic needs for survival. Some experts say that the hostage regresses to, perhaps, a state of infancy; the captive must cry for food, remain silent, and exist in an extreme state of dependence. In contrast, the perpetrator serves as a mother figure protecting her child from a threatening outside world, including law enforcement’s deadly weapons. The victim then begins a struggle for survival, both relying on and identifying with the captor. Possibly, hostages’ motivation to live outweighs their impulse to hate the person who created their dilemma.⁸

THE IMPORTANCE OF UNDERSTANDING

Crisis negotiators no longer consider the bonding that occurs between captive and captor in cases of Stockholm syndrome detrimental. They encourage its development because it improves the chances of hostage survival, despite the fact that it sometimes means authorities no longer can count on the cooperation of victims in working for their release or later prosecuting the perpetrators.⁹ As such, individuals working as crisis negotiators must understand how the phenomenon unfolds, as well as ways to promote the psychological process, thus increasing the likelihood of a successful outcome.

Comprehending how Stockholm syndrome develops requires an understanding of the mind-set of the captive. Hostages have to concentrate

on survival, requiring avoidance of direct, honest reactions to destructive treatment.¹⁰ They must become highly attuned to the pleasure and displeasure reactions of their captors. As a result, victims seem more concerned about the perpetrator's feelings than their own. Hostages are encouraged to develop psychological characteristics pleasing to hostage takers, such as dependency; lack of initiative; and an inability to act, decide, or think. The captive actively devises strategies for staying alive, including denial, attentiveness to the captor's wants, fondness (and fear) of the perpetrator, apprehension toward interference by authorities, and adoption of the hostage taker's perspective. Victims are overwhelmingly grateful to captors for giving them life and focus on their acts of kindness, rather than their brutality.¹¹

Law enforcement and psychology professionals have offered several opinions concerning the development of Stockholm syndrome. However, most agree on the conditions necessary for it to occur.

- A person held in captivity cannot escape and depends on the hostage taker for life. The captor becomes the person in control of the captive's basic needs for survival and the victim's life itself.

- The hostage endures isolation from other people and has only the captor's perspective available. Perpetrators routinely keep information about the outside world's response to their actions from captives to keep them totally dependent.

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- The hostage taker threatens to kill the victim and gives the perception as having the capability to do so. The captive judges it safer to align with the perpetrator, endure the hardship of captivity, and comply with the captor than to resist and face murder.
- The captive sees the perpetrator as showing some degree of kindness. Kindness serves as the cornerstone of Stockholm

syndrome; the condition will not develop unless the captor exhibits it in some form toward the hostage. However, captives often misinterpret a lack of abuse as kindness and may develop feelings of appreciation for this perceived benevolence. If the captor is purely evil and abusive, the hostage will respond with hatred. But, if perpetrators show some kindness, victims will submerge the anger they feel in response to the terror and concentrate on the captors' "good side" to protect themselves.¹²

HUMANIZATION OF THE CAPTIVE

While many experts consider encouraging the development of Stockholm syndrome to increase hostage survival difficult, crisis negotiators can attempt to humanize the captive in the mind of the perpetrator, thereby stimulating the emergence of the critical, third characteristic in the hostage taker—positive feelings toward the captive. To this end, determining the number of people involved, as well as their names, is paramount.

Another way negotiators can attempt to personalize the hostage is to ask the subject to pass on a personal message to the victim (e.g., "Tell Mark that his children love him very much

and will be there to meet him when he comes out.”). This type of dialogue reminds the perpetrator of the hostage’s name and that the victim is a real person with a family. It also inserts a suggestibility statement (“when he comes out”) that implies a peaceful resolution.

Trying to initiate Stockholm syndrome in the perpetrator involves a delicate blend of personalizing captives without overhauling them. “Most hostage takers want it to be all about them. If the negotiator asks too many questions about the hostages, he may begin to feel ignored and discounted. If you want to solve the hostage’s problems, you need to solve the hostage taker’s problems.”¹³ To strike the balance necessary for successful negotiations, asking about the welfare of the captor first, and the captive later, is key.

Using those simple strategies may assist in formulating a bond between the victim and perpetrator. That being said, law enforcement personnel must be aware that although they are attempting to maintain the “balancing act” of increasing rapport with the hostage taker and influencing the safety of the hostages, the ultimate goal is to peacefully resolve the crisis for all involved. If achieving that result involves manipulating hostage takers’ belief that

the focus remains on them, then negotiators must be willing to understand the rationale behind the maneuver and learn the skills necessary to employ it.

CONCLUSION

The subject of Stockholm syndrome, fueled, in part, by a number of high-profile cases, has generated a lot of discussion and opinions. Many people find the phenomenon as difficult to understand as it is fascinating.

“

**...this condition
does not result
from a conscious
decision or a
rational choice to
befriend a captor.**

”

Although, at first, this psychological process may appear complex and uncontrollable, further exploration with those experienced in the area of crisis negotiation revealed that the condition and its effects can serve as a useful tool in successful outcomes. In understanding the basis behind the mental state and behavior of both the hostage taker and the captive, law enforcement agencies can place Stockholm syndrome in the

appropriate perspective and see it as a catalyst in improving the training of hostage negotiators and encouraging peaceful resolutions. ♦

Endnotes

¹ Maggie Haberman and Jeane MacIntosh, *Held Captive: The Kidnapping and Rescue of Elizabeth Smart* (New York, NY: Avon Books, 2003).

² Paul Wong, “Elizabeth Smart and Stockholm Syndrome”; retrieved from http://www.meaning.ca/articles/stockholm_syndrome.htm.

³ http://en.wikipedia.org/wiki/Stockholm_syndrome

⁴ Pete Williams, “Twenty Years Later, Stethems Still Seek Justice”; retrieved from <http://www.msnbc.msn.com/id/8219264>.

⁵ G. Dwayne Fuselier, “Placing the Stockholm Syndrome in Perspective,” *FBI Law Enforcement Bulletin*, July 1999, 22-25.

⁶ Stephen J. Romano served as chief of the Crisis Negotiation Unit of the Critical Incident Response Group at the FBI Academy.

⁷ Sigmund Freud, *The Ego and the Id: The Standard Edition* (New York, NY: W.W. Norton and Company, 1960).

⁸ Thomas Strentz, “Law Enforcement Policy and Ego Defenses of the Hostage,” *FBI Law Enforcement Bulletin*, April 1979, 2-12.

⁹ Edna Rawlings, Dee Graham, and Roberta Rigsby, *Loving to Survive: Sexual Terror, Men’s Violence, and Women’s Lives* (New York, NY: New York University Press, 1994).

¹⁰ Ibid.

¹¹ Anne Jones, “Post-Traumatic Stress Disorder, Rape Trauma Syndrome, and Battering”; retrieved from <http://www.ojp.usdoj.gov/ovc/new/victimpow/student/postram.htm>.

¹² Ibid.

¹³ Supra note 6.

ViCAP Alert

Missing Person



On Monday, October 24, 2005, Tara Faye Grinstead, a high school teacher and former beauty contestant from Ocilla, Georgia, was reported missing after she did not report to work. Tara was last seen at 11:00 p.m. on Saturday, October 22, 2005, when she departed a social gathering approximately 6 blocks from her home. Investigators believe that Tara arrived home at some point as her vehicle was parked in her carport. Tara's purse, containing her credit cards and identification, was missing, as well as the keys to her residence and vehicle. Investigators suspect that her disappearance may be the result of foul play.

Alert to Law Enforcement

Any agency or private citizen with information regarding Tara F. Grinstead is requested to contact Special Agent Dominic Turner of the Georgia Bureau of Investigation at 478-987-4545 or Dominic.Turner@ghi.state.ga or Crime Analyst

Lennie Wilson, Jr., of the FBI's Violent Criminal Apprehension Program (ViCAP) Unit at 703-632-4183 or lwilson7@leo.gov. ♦

Name:	Tara Faye Grinstead
DOB:	11/04/1974
Age:	32
Race:	White
Gender:	Female
Height:	5'3"
Weight:	125 pounds
Hair:	Brown, longer than shoulder length
Eyes:	Brown
Piercing:	Navel
Clothing:	It is assumed she was wearing black sweatpants and gray New Balance tennis shoes.

Child Pornography Web Sites

Techniques Used to Evade Law Enforcement

By WADE LUDERS



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Illegal child pornography on the Internet is a huge industry. Recent studies estimate the number of child pornography Web sites at over 100,000,¹ capable of bringing in more than \$3 billion annually.² While child pornography is predominantly illegal worldwide, many savvy pornographers make their content available to the Internet community, lacking fear of capture by law enforcement for several reasons.

First, child pornography Web sites often are so complex that efforts to identify the administrators become tedious and time consuming. Frequently, by the time investigators have taken the appropriate legal steps to track administrators, the suspect sites have moved from one place to another on the Internet.³ Such movement hinders law enforcement efforts because locating Web sites a second time in the vast, virtual world

of the Internet proves difficult. And, if they can locate it again, the legal process usually must start over.

Second, Web site administrators use methods to make their sites appear as though they are hosted overseas when, in fact, they are not. This technique often results in investigators ignoring these sites and searching for others they more easily can locate in their own country.



Special Agent Luders serves in the FBI's San Francisco, California, office.

**“
Law enforcement
agencies must be
aware of the
techniques online
child pornographers
use to further their
illegal activities....
”**

Finally, the manner in which people pay for child pornography Web site memberships often involves stolen credit cards, identity theft, and online financial transactions. Tracking these payment methods involves complex paper trails, spin-off investigations, and tedious legal processes that bog down and divert investigators' attention from the primary focus of the child pornography investigation. Armed with information about the technology and various techniques that child pornography Web site administrators use, investigators can better prepare to combat this international problem that targets the most precious and defenseless victims—children.

Proxy Servers

Each Internet user and Web site is identified by an Internet protocol (IP) address, such as

64.128.203.30, which is one of the IP addresses for the FBI's Web site.⁴ Readable text, or a domain name, often is displayed in lieu of this string of numbers for convenience and ease of Internet users. Since the beginning of cybercrime, law enforcement agencies have relied on this unique identifier to locate, and eventually prosecute, cybercriminals.

Clever pornographers, as well as anyone else wishing to conceal their online identity, use proxy servers to mask their true IP address on the Internet. A proxy server allows one computer on the Internet to act for another one or, in some cases, many others. Essentially, the proxy server shares its identifying IP address and allows other users to access the Internet through it. Therefore, any online act committed by someone using a proxy server

appears as though the proxy server executed it. For investigators, this merely adds another step, usually in the form of an additional legal process, to obtain the true IP address of the end user. Whether investigators even can acquire it depends on if the proxy server keeps accurate logging information and if the proxy server's host will make the address available.

Online users who do not want anyone to trace them use an anonymous proxy server. Similarly, the proxy masks the IP address of potential offenders; however, no logs or other identifying information are kept. Therefore, they will not assist law enforcement agencies in determining the true identity of the original user.

Anonymous proxy servers are easy to use, and many are free, requiring no registration or identifying information from the end user. Also, many are located in other countries. While a typical proxy server may be available one day and offline the next, Web site administrators easily can locate another one to use.

Hosting Providers

Like all Web sites, child pornography sites must be hosted somewhere for Internet users to access. Thousands of hosting providers exist, all offering space on the Internet and

a myriad of other online and offline services. Most charge a fee based upon the amount of disk space used to host the Web site and the amount of traffic to that site.

Several online tools can determine a particular Web site's hosting provider, which, once located, can furnish valuable information regarding who registered it, who pays the monthly bill, and, often, the IP address they use to do so. Usually, law enforcement agencies must take legal action to obtain this information. A child pornographer who wants to remain anonymous may use a proxy server anytime they communicate online with the hosting provider. To avoid a money trail for law enforcement investigators to trace, free hosting providers often are used because they are relatively easy to find. Offering no-frills hosting, many of these providers make their revenue by placing advertisements on their customers' Web sites. Without accurate customer or IP address information, they provide little use to law enforcement with or without legal process.

Web Site Strategy

Like other for-profit Web sites, child pornography sites must advertise to prospective customers to stay in business. These advertisements benefit law enforcement because they

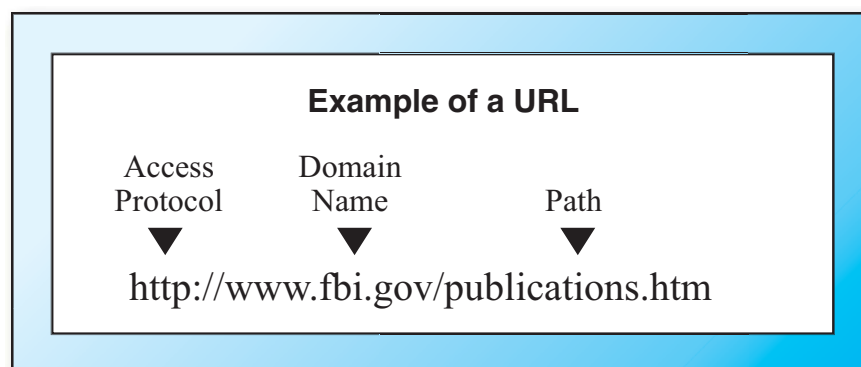
are accessible to people searching the Internet for child pornography. Online pornography businesses usually separate the advertise-and-join Web site from the members area. The first one often contains a preview of what prospective members can expect to receive if they agree to pay a subscription fee, and it includes a hyperlink to use to obtain membership. In the members area, Web site administrators place content available to paying members. This location is not disclosed until after a person purchases a membership. While this strategy of separating the two Web sites helps prevent hackers from accessing members-only material without paying, it also deceives law enforcement regarding the actual location of the illegal content.

Child pornographers can create multiple advertise-and-join Web sites using free hosting providers outside the United States. The actual location of

the illegal content will become apparent only after purchasing a membership. Because law enforcement agencies often are reluctant to make a covert purchase of a membership or access to a child pornography Web site apparently in another country, much illegal child pornography located in the United States evades investigation. By employing a strategy of separating the advertise-and-join Web site from the members area, child pornographers can effectively conceal a great deal of their illegal content from everyone but paying customers.

URL Encoding

A Web site's uniform resource locator (URL) is the text typically typed into the top bar of a Web browser that directs a user to a Web site. The URL usually takes the form of access protocol (*http*), domain name (*www.fbi.gov*), and a path to a file or Web site on that server (*/publications.htm*).



URLs may appear straightforward and easy to interpret, but many individuals know that they can use hexadecimal codes, IP addresses, and other text in place of standard-looking domain names to confuse people attempting to track the source of the Web page content. Some tricks include placing misleading text followed by the @ symbol between the access protocol and the domain name. Any text placed prior to this symbol is not used to resolve the true URL. Next, URLs may be written in their corresponding hexadecimal codes (e.g., the letter “A” represents “%61,” “B” is “%62” and so forth). The three URLs in the box look surprisingly different, but all point to the same location on the Internet. Using a combination of these and other URL encoding techniques, child pornographers use the Internet’s underlying technology to obscure and conceal the actual location of their content.

Redirect Services

Redirect services allow individuals to use another URL to access their Web site. The services redirect users to a Web site hosted in a particular country. These sites, however, have the outward appearance of being located in another country, rather than what the domain extension denotes. At this initial stage of exploring URLs, law enforcement agencies often elect to use their investigative resources to find sites obviously hosted within their own jurisdiction to avoid the additional legal hurdles of pursuing an international legal process.

Clever HTML

Hypertext markup language, or HTML, is the language of the Internet and most Web sites. People who know this language can exploit it enough to deceive even veteran Internet surfers when locating the source of Web content. Viewing the source HTML behind a

suspected Web site may reveal images and other content located at a different URL and physical location, rather than the original Web site itself. HTML code even can be used covertly to redirect users to another URL or location on the Internet without their knowledge.

IP Filters

A Web site typically serves HTML code to a Web browser, resulting in a familiar Web page for each Internet surfer. However, some scripting languages allow different Web pages to be served to different users based upon qualifying factors, such as an IP address. For example, one search engine uses filtering technology to serve a German language version to anyone accessing their Web site from a German IP address. Similarly, pornographers could use this technology to serve different pages to users coming from differing ranges of IP addresses. For example, IP addresses

Examples of Misleading URLs

<http://www.fbi.gov/publications.htm>

<http://MisleadingTextGoesHere@www.fbi.gov/publications.htm>

<http%3A%2F%2Fwww%2E%62i%2Egov%2Fpu%62li%63%61tions%2Ehtm>

within the United States or those known to be from law enforcement or government sources could receive nonpornographic content.

Anonymous Payment Methods

Law enforcement agencies may prefer the strategy of tracing money when targeting for-profit child pornography enterprises. However, inventive child pornographers use several tools to profit from their ventures. The growth of Internet commerce has resulted in a new industry of online payment processors, which present an ideal solution for many online businesses seeking to collect revenue for a good or service. They collect significant customer data, including name, address, transaction information, and IP address logs. Processors in the United States assist law enforcement efforts worldwide to curb child pornography. But, obtaining records from processors in other countries can become a lengthy procedure. Some online payment processors do not require nor verify identifying information about their customers. They may only request users to choose a name and password to open an account. Many people who seek child pornography provide their credit card numbers and significant identifying

information to such Web site operators. Quite often, administrators for these sites intentionally use their customers' credit cards to fund their own operations, such as purchasing another domain name or a location at another Internet hosting provider. This places the child pornography subscriber in the precarious position of not reporting the unauthorized use of their credit card to avoid betraying that they sought child pornography.

...many savvy pornographers make their content available to the Internet community, lacking fear of capture by law enforcement....

While law enforcement agencies more easily can track credit card purchases, credit card fraud presents a unique opportunity for Internet child pornographers. Hackers spend countless hours finding vulnerabilities in online banking software to seize identities of unsuspecting users. People lurking in the right places on the

Internet can purchase vast lists of credit card numbers. Then, they use these compromised numbers and identities to pay for child pornography Web site memberships.

Conclusion

Illegal child pornography is one of the fastest growing businesses on the Internet, and online pornographers use numerous tactics to evade law enforcement's efforts to capture them. Attempts to identify administrators of these complex Web sites can prove frustrating for investigators. Advances in technology present even more challenges in shutting down these Web sites in the future. Law enforcement agencies must be aware of the techniques online child pornographers use to further their illegal activities—only with such knowledge will they be able to combat this critical international problem. ♦

Endnotes

¹ Robert Grove and Blaise Zerega, "The Lolita Problem: Illegal Child Pornography is Booming, Thanks to the Internet—and the Unwitting Support of Corporate America," *Red Herring*, January 2002, 47-53.

² <http://familysafemedia.com>

³ Legal processes include search warrants, court-ordered and administrative subpoenas, and various international requests through mutual legal assistance treaties and letters rogatory.

⁴ The actual IP address of www.fbi.gov.

Bulletin Reports

Day Laborer Sites

Day laborers are people who gather in public places to seek manual labor jobs, such as construction, gardening, landscaping, and farming, for predetermined wages. Issues that arise at such sites relate to parking and traffic problems, loitering, littering, destruction and defacing of property, injuries, and harassment of pedestrians, as well as crimes, such as assault, robbery of the laborers, and the consumption and sale of alcohol and other drugs.

The Office of Community Oriented Policing Services (COPS) presents *Disorder at Day Laborer Sites*, which proposes 11 strategies likely to be effective in dealing with the problem. Law enforcement agencies need to understand the factors that contribute to their local problem to frame analysis questions, identify valid effectiveness measures, determine important intervention points, and select an appropriate set of responses. This report is available at <http://www.cops.usdoj.gov/mime/open.pdf?Item=1960> or by contacting the National Criminal Justice Reference Service at 800-851-3420 or <http://www.ncjrs.gov>.

Drug Strategy

The Office of National Drug Control Policy (ONDCP) offers the President's 2007 *National Drug Control Strategy*. The success of the President's strategy demonstrates that a robust drug control policy can achieve measurable progress in reducing drug abuse. Six years into the strategy, a review of trends in drug use provides important insights into what works in drug control. It also provides lessons in dealing with current challenges, such as continued high rates of drug use by adults and the persistent need to target young people in prevention and intervention efforts. The President's strategy, a copy of which can be retrieved at <http://www.whitehousedrugpolicy.gov>, contains chapters that address education and community action, intervening and healing America's drug users, and disrupting the market for illicit drugs.

Methamphetamine

The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, presents *Methamphetamine Use*, which presents statistical data on the trends and geographic characteristics of methamphetamine use in the United States between 2002 and 2005. Information is drawn from the annual National Survey on Drug Use and Health. The report highlights several facts: 1) methamphetamine use in the past year among the civilian, noninstitutionalized population aged 12 or older declined overall between 2002 and 2005; 2) combined data from 2002 to 2005 indicated that persons in the West (1.2 percent) were more likely to have used methamphetamine in the past year than persons in the Midwest, South, and Northeast—these findings were consistent for both females and males; and 3) the number of recent methamphetamine initiates (i.e., first-time users 12 months

prior to the survey) remained relatively stable between 2002 and 2004 but decreased between 2004 and 2005. This report is available online at <http://oas.samhsa.gov/2k7/meth/meth.pdf> or by contacting the National Criminal Justice Reference Service at 800-851-3420 or <http://www.ncjrs.gov>.

Diversity

Diversity Series: Religions, Cultures, and Communities, a DVD series sponsored by the Bureau of Justice Assistance (BJA) and the Chicago Police Department, explores some of the many religions and cultures with which law enforcement officials come into contact. Each video clip offers tips on working with people of different faiths and backgrounds, including suggested law enforcement techniques. A copy can be obtained by contacting the National Criminal Justice Reference Service at 800-851-3420 or <http://www.ncjrs.gov>. Clips also can be viewed online at <http://www.ojp.usdoj.gov/BJA/pubs/diversity.html>.

Bulletin Reports is an edited collection of criminal justice studies, reports, and project findings. Send your material for consideration to: *FBI Law Enforcement Bulletin*, Room 201, Madison Building, FBI Academy, Quantico, VA 22135. (NOTE: The material in this section is intended to be strictly an information source and should not be considered an endorsement by the FBI for any product or service.)

Leadership Spotlight

Achieving Success Through a Balanced Scorecard

All great performance involves improving the ways one achieves the results—better methods, better means to the goal.

—John Gardner

The art of exercising extraordinary leadership—whether inherited, learned, or both—is a precious commodity of great value to the law enforcement community. While leaders should focus on their greatest asset—the people around them—they also must be attentive to the increasing emphasis on quantifying their results. Consequently, effective leaders must answer this question: What have we (staff, partners, you) accomplished toward the greater vision, mission, and goals? If a leader cannot competently answer this question and quantify it, then it is time to consider using a Balanced Scorecard (BSC).

The BSC was introduced by Harvard Business School in 1992 and has continued to gain momentum across diverse industries and organizations. Effective leaders, using the BSC approach and input from key individuals in the enterprise, define the organizational objectives. Then, they must build a consensus with stakeholders concerning the means, methods, and measurements relative to those objectives. The BSC objectives can be related to, for example, training, customers, projects, client services, and finances. The data gathered and incorporated in a BSC, whether quantitative or qualitative, permits the leader to analyze and measure progress at three stages.

- 1) Beginning stage: initial metrics defined in the BSC (the previous operational state)
- 2) Present stage: measured results from the beginning state to the present (the current operational state)
- 3) End stage: measured results from both the beginning and the present states toward targeted objectives (the future operational state)

Much data collected in a BSC is supplied vertically from subordinates. This results in both rich data that mirrors frontline efforts within the organization, and creates cohesion, synergy, and ownership among employees toward the BSC objectives. Leaders must remember that BSC is never a substitute for personal leadership because performance results follow leadership, not vice versa.

In summary, maintaining a BSC can assist leaders in making decisions quantifiable and sensible to superiors, subordinates, and external constituencies. It will arm leaders with the ability to establish a baseline for measuring and analyzing performance results directed toward driving and sustaining the global vision and the mission of their organizations. ♦

Chris Lenhard, a member of the Leadership Development Institute at the FBI Academy, prepared this Leadership Spotlight.



Tracking “Bad Guys” Legal Considerations in Using GPS

By KEITH HODGES, J.D.

The ready availability and increasing affordability of global positioning system (GPS) devices allow law enforcement agencies to efficiently, accurately, and safely track the movement of vehicles.¹ The results of GPS tracking create a permanent and credible record of precisely where the tracked vehicle was and the time it was there. To use

this technology, officers must have lawful access to the target vehicle to install certain instruments.

The simplest form of installation consists of a GPS receiver, antenna, power supply, and logging device that record where the vehicle has moved. Depending on the equipment, officers can remotely obtain data electronically or by

physically retrieving the logging device from the vehicle. The apparatus could be in single or multiple units. Live-tracking applications will require all of these items plus a transmitter and its separate antenna.

The quality of information derived from these devices and their relative simplicity make the use of GPS technology attractive to law enforcement.

Prior to employing such technology, officers must be aware of the legal issues that arise with the installation of the technology, as well as its monitoring. This article explores these legal issues and provides an overview of a recent change to the federal search warrant statute to address tracking technology.

THE ISSUES

The federal electronic surveillance statute (Title III) does not implicate the use of GPS devices or intercepting their transmissions.² Title III (Title 18, Section 2510 (12)(C), U.S. Code) specifically excludes signals by mobile tracking devices, such as GPS, from federal wiretap law.³

Fourth Amendment considerations do apply, however, to the installation and monitoring

of GPS devices. When installing the technology, Fourth Amendment consideration arise if officers need to intrude into an area where people have a reasonable expectation of privacy. With such installations, the Fourth Amendment applies and the officers will need a warrant. If not, a warrant is not required.

Not only do Fourth Amendment privacy expectations apply to the installation of GPS devices on vehicles but tracking the vehicle once the device is installed also may require a warrant. In a case involving radio frequency (RF) tracking,⁴ the U.S. Supreme Court has held that the Fourth Amendment warrant requirement is not triggered if the vehicle is tracked in public places, which include all public roads and highways.⁵ If the tracking will be done while

the vehicle is in an area where there is a privacy expectation, however, a warrant is required.⁶ As a practical matter, due to limitations on GPS technology, tracking in a nonpublic area likely is not feasible because current GPS technology, unlike RF transmitters and receivers, does not work in areas where the GPS receiver cannot obtain a satellite signal (e.g., indoors or under shelter).

However, GPS is more intrusive than RF tracking because of GPS' ability to capture greater detail. Also, unlike much RF tracking technology, GPS can be placed on a vehicle and the data retrieved many days or weeks later. Based on these differences, as well as the prevalence of GPS tracking and the uncertainty of state laws, the issue may reach the Supreme Court in the next few years. While the RF tracking analogy would appear to indicate that the Court will uphold warrantless GPS tracking in public places, it is difficult to accurately predict how the Supreme Court will rule.⁷

In short, no *federal* case requires a warrant to track in public places, assuming the installation of the device was lawful. While the Supreme Court has not yet decided the issue with regard to GPS, it did determine in 1983 that RF (beeper) tracking on public roadways does not trigger the Fourth Amendment.⁸



Mr. Hodges is a senior instructor in the Federal Law Enforcement Training Center's Legal Division at Glynco, Georgia.

“
The results of GPS tracking create a permanent and credible record of precisely where the tracked vehicle was and the time it was there.
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THE MODIFICATION TO RULE 41: TRACKING DEVICES

On December 1, 2006, Rule 41 of the Federal Rules of Criminal Procedure was modified to set forth procedures for federal agents to obtain, process, and return warrants to install and use tracking devices. In general, the rule allows for a magistrate judge to issue a warrant authorizing the installation of a tracking device and requires a return be made, informing the issuing magistrate judge of details of the installation, and notice to be provided to the target of the order.⁹ It appears that Section 3117 will become irrelevant except for the definition of a tracking device.¹⁰

- Rule 41(b)(4) Authority to Issue the Warrant: A magistrate judge in the district where the device will be installed may issue a warrant to install a tracking device. The issuing magistrate judge may authorize tracking in the district where the device will be installed, as well as any other district in which it may travel.
- Rule 41(e)(2)(B) Contents of the Warrant: The warrant must contain the identity of the person or property to be tracked and that of the magistrate judge to whom the return on the warrant will be made. It also must denote a reasonable period of time

that the device may be used, not to exceed 45 days. Other extensions for not more than 45 days may be granted for good cause shown.¹¹

The warrant must include a command that the device be installed within 10 days or less from the time the warrant is issued and during the daytime unless the magistrate, for good cause shown, authorizes another time, along with a command that there will be a return on the warrant.

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The quality of information derived from these devices and their relative simplicity make the use of GPS technology attractive to law enforcement.
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- Rule 41(f)(2) Return on Warrant: Within 10 days after use of the device has ended, the officer executing the warrant must make the return to the magistrate judge specified in the warrant. The return must contain the exact dates and times of both installing the device and the period

in which it was used. The return must be served on the person who was tracked or whose property was tracked within 10 days after use of the device has ended.¹²

- Rule 41(f)(3) Delays in the Return: Upon request of the government, the magistrate judge may delay providing the notice required by the return.

THE CASE

A federal grand jury indicted Joe Smith for assorted and serious firearms and drug trafficking offenses. His trial will begin in a few months, and he currently is held without bail. Several government witnesses subpoenaed to testify have reported to federal agents that they believe they are being harassed and threatened because of their role in the upcoming trial. Unknown individuals have vandalized the witnesses' property. These incidents have occurred at random occasions and locations, including the witnesses' homes and places of employment, the residences of friends and relatives during the witnesses' visits, and the witnesses' cars parked in public places. In several instances, weapons have been fired at homes where the witnesses live or were visiting. Authorities have tried to conduct surveillance, but all efforts have proved unsuccessful. Resources

do not exist to offer 24-hour protection to all of the witnesses or to maintain surveillance of all possible perpetrators and locations.

From what agents have discovered so far, it appears someone is engaged in witness tampering in violation of Title 18, Section 1512 of the U.S. Code, as well as other offenses. These activities, if they continue, could jeopardize the Smith trial.

The agents have developed four of Smith's close associates—Abbott, Brown, Chastain, and DeLorean—as likely suspects. The evidence collected to date does not amount to probable cause to believe that these individuals have committed offenses. The agents decide to leverage the tracking capabilities of GPS to compare the timing and location of specific future events with the movement of the suspects' vehicles.

Abbott lives in a suburban development and usually parks his automobile on the street. Brown resides in a gated community and parks his car in his driveway. Chastain regularly keeps his vehicle in the garage at his home. Technicians advise that they can accomplish the GPS installations for Abbott, Brown, and Chastain without intruding into the automobiles. But, with DeLorean, who owns a sports car, technicians advise that they cannot install a GPS

device on the exterior of the vehicle without it being discovered. They will need to get into the car to conceal the equipment.

The agents now have the equipment and other resources to use GPS tracking devices. But, what legal authority must they acquire to install and use them?

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Under federal evidence law, only the original of a writing may be admitted unless certain exceptions apply.

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Tracking Abbott

Abbott lives in a residential neighborhood and parks his automobile on the street, a public place where the agents can freely approach his car. Federal law clearly shows that although Abbott has an expectation of privacy in the interior of his vehicle, he does not have it for the car's exterior.¹³ The law allows the agents, without a warrant, to access Abbott's automobile to install a tracking device on its exterior.¹⁴ If the agents need to get *into* his car to install the equipment or to tie into the vehicle's wiring,

however, then they will need a warrant because this constitutes an intrusion into an area where Abbott has an expectation of privacy.

Tracking Brown

Brown's situation is a little different because he lives in a gated community and parks his car in his driveway. However, these two factors will not likely alter the Fourth Amendment analysis, as with vehicles parked on public streets, given no expectation of privacy exists for those in parking lots¹⁵ or on streets in gated communities.¹⁶ Because Brown has no expectation of privacy for the exterior of his car parked in a gated community, nothing prevents the agents from entering the area to locate the vehicle.

The fact that Brown keeps his automobile parked in his driveway makes warrantless installation a closer call. Federal cases support the position that no expectation of privacy occurs in the usual residential driveway,¹⁷ but this determination always will depend on the driveway's length, what measures the homeowner has taken to restrict the driveway from public view and access, and other considerations that officers should discuss with an assistant U.S. attorney before attempting a warrantless installation. Obtaining a warrant or waiting for the vehicle to move

to a public place might represent a better option.

Tracking Chastain

Chastain presents a greater challenge. He parks his car in his garage, an area within his curtilage where he has an expectation of privacy. While the agents do not need a warrant to install a device on the exterior of his vehicle, they must intrude into an area where Chastain has an expectation of privacy to access it in the garage. Unless the agents can locate his automobile in a public place to install an external device, they will need a warrant.

Tracking DeLorean

Where DeLorean parks his car is of no importance; the agents will need a warrant because they must get *into* the automobile to install the device. Intrusions into the passenger compartment, trunk, or under the hood of a vehicle to access its wiring or power sources or to install a device or antenna are interior installations. Officers should be conservative and consider an external installation as one that involves the installation of *all* components of the tracking device and any transmitters, including power sources and antennas, on the exterior of the vehicle. Conversely, if it is necessary to get into the car to install *any* of the components, a warrant is required.



THE INVESTIGATION

Because the agents investigating the four suspects will attempt to track the vehicles only as they move on public roads and highways, a warrant is not required to do the tracking. The agents decide to install a tracking device on the exterior of Abbott's car, usually parked on a dimly lit street in a residential neighborhood. In Abbott's case, no expectation of privacy exists, so a warrant is not required.

For Brown, the agents choose not to install a tracking device on his vehicle while it sits in the driveway in the gated community, which is well lighted and patrolled by private security. Instead, they will install a device on the exterior of Brown's automobile when it is parked at a restaurant where he works at night. No warrant is required.

The agents determine that it is not feasible, even with a warrant, to get into Chastain's garage to access his car and install a device. They decide to install the equipment on the exterior of Chastain's automobile when he leaves it unattended in the parking garage of his girlfriend's apartment building. A warrant is not required.

Even if the agents can approach the exterior of DeLorean's car without invading an area where he has an expectation of privacy, they still will have to obtain a warrant because they must get inside the vehicle to install the device. This need motivates the agents to collect more information on DeLorean. As they check police reports about some of the incidents, a pattern emerges. A car like his was reported circling two of the victims' houses when the events occurred. DeLorean

also got a speeding ticket that put him near the time and place of a third incident. Further, DeLorean told a fellow employee, “I can tell you that none of these witnesses have the guts to testify against my friend; I am making sure of that.” The same person told the agents that DeLorean is scheduled to fly to “somewhere in the Caribbean” for a short vacation and that he usually drives his automobile to the airport when he flies. Based on this information, the agents obtain a warrant from the magistrate judge to install the device in DeLorean’s car when he leaves it at the airport parking garage. They also ask the magistrate to allow them to move the vehicle to a more secure or better-lit location if that becomes necessary.

THE OUTCOME

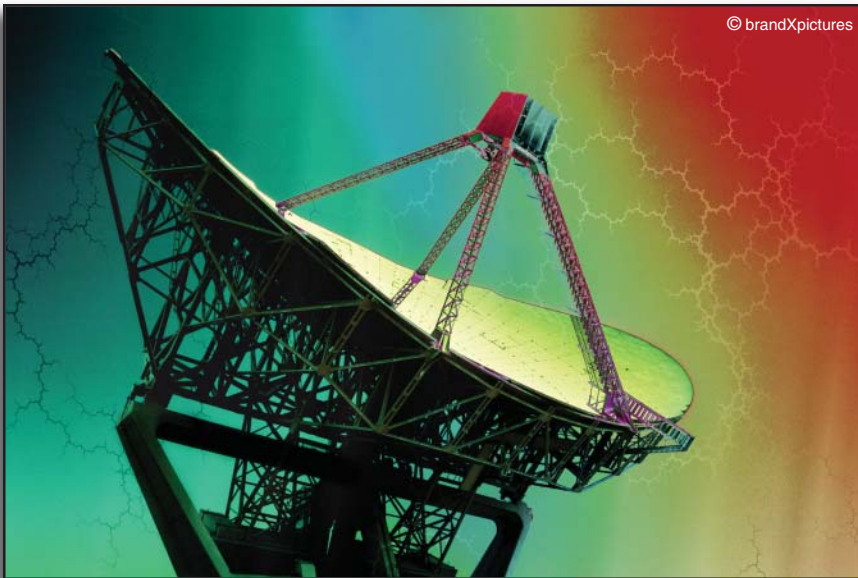
Technicians install the four GPS devices according to plan. In the case of Chastain and DeLorean, the analysis of the data captured shows that on several occasions, Chastain and DeLorean were in the exact location and within a small window of time when acts of witness tampering occurred (vandalism of cars, rocks thrown through windows, and shots fired at a witness’ house). This evidence, along with other information developed by the agents, leads to the indictment of Chastain and DeLorean for witness tampering and other offenses.

Under federal evidence law, only the original of a writing may be admitted unless certain exceptions apply. This constitutes the crux of the best

evidence rule.¹⁸ What officers see on a computer screen or the display of a GPS device is a writing. Testimony about what an officer saw on the screen or display—without having the writing available in court—should not withstand a best evidence objection. What is needed is either a photograph of the screen or display or a “screen print” to satisfy the requirement for an original.¹⁹ Either of the two following options would work the best: 1) download the GPS data and create a printout or 2) display the data in court.

To prepare for court, it is not sufficient for the agents to testify that they read the data and the information revealed the location of the suspects’ vehicles at certain times and places. Rather, the agents must present the printouts of the data and probably have a computer with the appropriate software to show the judge and jury the results of the tracking operation. Of course, first, they must lay a foundation with testimony about how GPS works, the details of the installation of the devices, and the analysis of the data.

United States v. Bennett can demonstrate the consequences of not following these principles.²⁰ Federal officers boarded a drug-laden vessel. To determine whether it had traveled “from any place outside the United States” in violation of importation laws, the



officers examined the “back-track” feature on a GPS device found onboard. The officers did not download the data nor seize the device. The trial court permitted the boarding officers to testify that the GPS display indicated that the vessel had traveled from Mexican waters into those of the United States. On appeal, however, the importation conviction was reversed because the officers’ testimonies violated the best evidence rule.

CONCLUSION

It is important to recognize that the new Federal Rule of Criminal Procedure 41 does *not* change the law regarding *when* a warrant is required to install or track. It only sets forth the procedure to request and issue a warrant *if* one is required.

When employing global positioning system devices, officers should use warrants whenever possible for four main reasons. First, warrants are more likely to fulfill the Fourth Amendment’s reasonableness requirement. Next, local, county, and state officers may not know whether a state court will read the state constitution to require a warrant even if the Fourth Amendment and federal case law would not. In addition, warrants give officers flexibility in the event that the initial plan to make a warrantless installation is thwarted. For example, when

attempting to execute a warrantless installation, officers might discover that the vehicle has moved into an area where there is a privacy expectation or that only an internal installation is feasible. Having a warrant in hand will allow the installation to go forward. Finally, officers may need a warrant if they have to change, maintain, reinstall, or retrieve the device in an area where a reasonable expectation of privacy exists, as when the vehicle is garaged in such a location after the device is installed. ♦

“
...first, they must lay a foundation with testimony about how GPS works, the details of the installation of the devices, and the analysis of the data.
”

Endnotes

¹ For an overview of GPS, access <http://en.wikipedia.org/wiki/GPS>. For applicability to law enforcement, see John S. Ganz, “It’s Already Public: Why Federal Officers Should Not Need Warrants to Use GPS Tracking Devices,” *The Journal of Criminal Law and Criminology* 95 (Summer 2005).

² 18 U.S.C. Section 2510.

³ 18 U.S.C. Section 2510(12)(C).

⁴ Prior to GPS, law enforcement had only radio frequency tracking technology, commonly called beepers or beacons, which required placing a transmitter on the target vehicle that sent a radio signal for law enforcement to follow. GPS devices, on the other hand, do not send signals but must receive them from GPS satellites. In live-tracking applications, a transmitter can be combined with the GPS receiver, thereby enabling the vehicle’s location to be transmitted.

⁵ *United States v. Knotts*, 460 U.S. 276 (1983) (radio frequency (beeper) tracking); *United States v. Forest*, 355 F.3d 942 (6th Cir. 2004) *cert. denied*, 543 U.S. 856 (2004) (cell-phone tracking in public place); and *United States v. Moran*, 349 F. Supp. 2d 425 (D.N.Y. 2005).

⁶ *United States v. Karo*, 468 U.S. 705 (1984).

⁷ As a precursor of the possible analysis yet to come, consider *United States v. Garcia*, 2007 U.S. App. LEXIS 2272 (7th Cir., 2007). Officers used GPS, without a warrant, to follow a suspect as he moved along public highways. The court held that following a car on a public street “is equivocally not a search within the meaning of the [4th] amendment.” Concerning the capabilities of GPS, however, the court went on to observe, “Technological progress poses a threat to privacy by enabling an extent of surveillance that in earlier times would have been prohibitively expensive. Whether and what kind of restrictions, in the name of the Constitution, should be placed on such surveillance when used in routine criminal enforcement are momentous issues that fortunately we need not try to resolve in this case.” And, the reason the court did not reach the question in the *Garcia* case was apparently because the police were not engaged in “mass surveillance” and they had “abundant grounds for suspecting the defendant.”

⁸ *United States v. Knotts*, 460 U.S. 276 (1983). State law may vary. *See*, California (*People v. Zichwic*, 114 Cal. Rptr. 2d 733 (Cal. Ct. App. 2001)) and Nevada (*Osburn v. State*, 44 P.3d 523 (Nev. 2002)). Some states require probable cause to install

devices and others reasonable suspicion. Federal law, however, would impose no articulable suspicion for cases in which tracking will be done only in public places, the vehicle is in a public place when the device is installed, and the installation is purely external. Some states require a warrant to track a vehicle in a public place. As of this writing, Oregon (*State v. Campbell*, 759 P.2d 1040 (Or. 1988)); Washington (*State v. Jackson*, 76 P.3d 217 (Wash. 2003)); and New York (*People v. Lacey*, 787 N.Y.S.2d 680 (N.Y. Misc. 2004)).

⁹ “The amendment [to Rule 41] reflects the view that if the officers intend to install or use the device in a constitutionally protected area, they must obtain judicial approval to do so. If, on the other hand, the officers intend to install and use the device without implicating any Fourth Amendment rights, there is no need to obtain the warrant. See, e.g., *United States v. Knotts*, where the officer’s actions in installing and following tracking device did not amount to a search under the 4th Amendment.... Amended Rule 41(d) includes new language on tracking devices.... The Supreme Court has acknowledged that the standard for installation of a tracking device is unresolved, and has reserved ruling on the issue until it is squarely presented by the facts of a case. The amendment to Rule 41 does not resolve this issue or hold that such warrants may issue only on a showing of probable cause. Instead, it simply provides that if probable cause is shown, the magistrate must issue the warrant. And the warrant is only needed if the device is installed (for example, in the trunk of the defendant’s car) or monitored (for example, while the car is in the defendant’s garage) in an area in which the person being monitored has a reasonable expectation of privacy.” Judicial Conference of the United States, *Report of the Advisory Committee on Criminal Rules*, May 17, 2005, *Committee Note*, Rules App. D-34 (internal citation omitted).

¹⁰ “As used in this section, the term ‘tracking device’ means an electronic or mechanical device which permits the tracking of the movement of a person or object.” 18 U.S.C. § 3117(b) (2006).

¹¹ If the results of the tracking device thus far disclose evidence of criminal activity, that fact always should be mentioned in the request for an extension.

¹² Any delay in the required notification must be one authorized by statute. See 18 U.S.C. § 3103a (2006).

¹³ *New York v. Class*, 475 U.S. 106 (1986); *Cardwell v. Lewis*, 417 U.S. 583 (1974); *United States v. Garcia*, 2007 U.S. App. LEXIS 2272 (7th Cir. 2007); *United States v. McIver*, 186 F.3d 1119 (9th Cir. 1999), cert. denied, 528 U.S. 1177 (2000); *United States v. Rascon-Ortiz*, 994 F.2d 749 (10th Cir. 1993); *United States v. Gonzalez-Acosta*, 989 F.2d 384 (10th Cir. 1993); *United States v. Muniz-Melchor*, 894 F.2d 1430 (5th Cir. 1990), cert. denied, 495 U.S. 923 (1990); and *United States v. Lyons*, 2005 U.S. Dist. LEXIS 6963 (D. Kan. 2005).

“When employing global positioning system devices, officers should use warrants whenever possible for four main reasons.”

¹⁴ One federal district court judge has agreed with a magistrate judge’s recommendation that reasonable suspicion is required before placing a GPS device on the exterior of a vehicle located in a public place. The author could find no other case in support of this conclusion. The chances are, however, that this issue may not receive any further appellate review because the magistrate later concluded and recommended that the federal district court judge find that there was not only reasonable suspicion but also probable cause (albeit no warrant) to

install the tracking device. *United States v. Garcia*, No. 05-CR-155-C, 2006 U.S. Dist. LEXIS 4642 (W.D. Wis. February 3, 2006); *United States v. Garcia*, No. 05-CR-0155-C-01, 2006 U.S. Dist. LEXIS 6424 (W.D. Wis. February 16, 2006). *United States v. Garcia*, No. 05-CR-155-C, 2006 U.S. Dist. LEXIS 29596 (W.D. Wis. May 10, 2006).

¹⁵ *United States v. Cruz-Pagan*, 537 F.2d 554 (1st Cir. 1976) and *Cornelius v. State*, No. A03-704, 2004 Minn. App. LEXIS 149 (Minn. Ct. App. February 10, 2004).

¹⁶ *United States v. Harris*, No. 99-5435, 2001 U.S. App. LEXIS 3918 (6th Cir. March 7, 2001) and *Wheeler v. State*, No. 05-94-01957-CR, 1996 Tex. App. LEXIS 2546 (Tex. App. June 26, 1996).

¹⁷ *United States v. Hatfield*, 333 F.3d 1189 (10th Cir. 2003); *United States v. Reyes*, 283 F.3d 446 (2d Cir. 2002), cert. denied, 537 U.S. 822 (2002); *United States v. Hammett*, 236 F.3d 1054 (9th Cir. 2001), cert. denied, 534 U.S. 866 (2001); *Rogers v. Vicuna*, 264 F.3d 1 (1st Cir. 2001); *United States v. Garcia*, 997 F.2d 1273 (9th Cir. 1993); *Maisano v. Welcher*, 940 F.2d 499 (9th Cir. 1991), cert. denied sub nom. *Maisano v. IRS*, 504 U.S. 916 (1992); *United States v. Smith*, 783 F.2d 648 (6th Cir. 1986); and *United States v. Ventling*, 678 F.2d 63 (8th Cir. 1982). For an exhaustive review of the law of driveways, see Vanessa Rownaghi, “Driving Into Unreasonableness: The Driveway, The Curtilage, and Reasonable Expectations of Privacy,” *The American University Journal of Gender, Social Policy and Law* 11 (2003).

¹⁸ FED. R. EVID. 1002.

¹⁹ An original is the writing or recording itself, a negative or print of a photograph, or “if data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately.” FED. R. EVID. 1001(3).

²⁰ 363 F.3d 947 (9th Cir.), cert. denied, 543 U.S. 950 (2004).

The author thanks Senior Instructor Jenna Solari, Federal Law Enforcement Training Center, for her invaluable insight and suggestions.

The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Cline



Officer Maxeiner

Officers Tim Cline and H.P. Maxeiner of the Bethalto, Illinois, Police Department responded to the residence of a man contemplating suicide. Upon arrival, they confronted the individual, who had doused himself with ether and also disconnected appliance gas lines. He held a self-igniting torch and threatened to blow up the home with the officers inside. Officer Cline remained in the house to distract the man while Officer Maxeiner went outside to disconnect the gas supply and to break windows for ventilation. The victim fled to the basement and ignited himself. Immediately, the officers ran to him

and extinguished the flames with a blanket. Both officers later required medical treatment for breathing problems. The man survived the incident.



Lieutenant Hecht

Lieutenant Joseph Hecht of the St. Louis, Missouri, Metropolitan Police Department was on patrol when he saw smoke coming from a four-family apartment complex. Immediately, he parked, grabbed the fire extinguisher from the trunk of his vehicle, and ran to the building. Residents in the area indicated that not everyone had made it outside. Lieutenant Hecht forced open the first- and second-floor doors to gain access to the apartments, yelling in an attempt to locate any occupants. A voice called out from the second floor, at which time Lieutenant Hecht quickly ran up the stairs and entered the smoke-filled apartment. Once inside, he located a male resident attempting to phone for help. The man indicated that the thick smoke did not

allow him to see or breathe. Lieutenant Hecht helped the individual evacuate the building and brought him to safety.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 209, Quantico, VA 22135.

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Patch Call



The Sapulpa, Oklahoma, Police Department serves one of the many cities resulting from oil production. Its patch depicts an oil well surrounded by urban development. The arrowhead and tepees honor Sapulpa's Native American heritage.



The patch of the Elizabeth City, North Carolina, Police Department features a moth boat, originally designed in the city in 1929. Elizabeth City's logo, "Harbor of Hospitality," represents its reputation to boaters and tourists.